



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

May 14, 2009

To: Supervisor Don Knabe, Chairman
Supervisor Gloria Molina
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to read "W. T. Fujioka", written over a horizontal line.

Sachi A. Hamaj
Executive Officer, Board of Supervisors

A handwritten signature in black ink, appearing to read "Sachi A. Hamaj", written over a horizontal line.

STATUS REPORT ON CIVIL SERVICE COMMISSION MOTION

On April 14, 2009, on the motion of Supervisor Molina, your Board directed the Executive Officer of the Board and this Office in consultation, as appropriate, with the Acting County Counsel and the Executive Director of the Civil Service Commission, to determine the level of need and the best structure to provide legal advice and representation to the Civil Service Commission and provide recommendations. In addition, your Board directed the Acting County Counsel, the Acting Director of the Department of Human Resources (DHR), and the Executive Officer of the Board to report back by department, on the process by which the County prepares cases, selects advocates, including outside counsel, to present cases before the Civil Service Commission.

In concert with the above actions, your Board requested for the report to identify all current advocates who represent the County before the Civil Service Commission, their level of experience and training, and a brief summary of each of the cases they have handled within the last two years including the outcomes of these cases. The report should also include a per department account of the total annual cost for each of the last two years of defending civil service cases. The costs should specifically identify any fees and costs incurred in hiring outside counsel to defend these cases and any costs associated with lost cases such as back pay, reinstatement, or other compensation; and report back to your Board on the above items by May 14, 2009. Our responses to your Board's directives are outlined below.

"To Enrich Lives Through Effective And Caring Service"

**Please Conserve Paper – This Document and Copies are Two-Sided
Intra-County Correspondence Sent Electronically Only**

Legal Advice and Representation to the Civil Service Commission

Background on Civil Service Commission Processes and Procedures

The Los Angeles County Civil Service Commission (Commission) is a County Charter mandated independent commission, which serves as the administrative appellate body for classified employees who have received major discipline, such as discharges, reductions, and suspensions in excess of five days, as well as discrimination complaints filed by County employees. The Commission also hears appeals of scored portions of examinations. Additionally, the Commission serves as the administrative appeals body for a number of cities that directly contract with the County. Pursuant to Civil Service Rule 4.03, the Commission must grant petitions for hearings in cases of discharge, reduction, or suspension in excess of five days. In 2008, the Commission received 536 petitions for hearings. Of these, 308 were disciplinary appeals, which amount to approximately 58% of the cases. For the period January 1, 2007 through April 10, 2009, the Commission received 1,094 appeals.

The Commission is comprised of five Commissioners appointed by the Board of Supervisors. The current Commissioners are:

Lynn Adkins (President)	Fourth District
Evelyn Martinez	First District
Vange Felton	Second District
Carol Fox	Third District
Z. Greg Kahwajian	Fifth District

The Commission's day-to-day operations are overseen by the Executive Director who manages a staff of seven full-time employees and two student workers.

When a matter is granted a hearing, the case is assigned to one of the Commission's 66 hearing officers. The hearing officers preside over evidentiary hearings. Parties to hearings have the opportunity to subpoena, present, and cross-examine witnesses. Subsequent to the close of hearings, the hearing officers submit reports and recommendations for the Commission's consideration. Hearing officers' reports must include findings of fact and conclusions of law. If the Commission adopts a hearing officer's recommendation, any party aggrieved by the proposed decision may file objections. If, based upon the objections, the Commission adopts a new proposed decision, any party who has not previously filed objections may do so. After all parties have been provided an opportunity to submit objections, the Commission renders its final decision.

Legal Advice to the Civil Service Commission

County Counsel provides legal advice to the Commission. On average, the assigned Deputy County Counsel allocates approximately two workdays a week to providing guidance to the Commission, including attending the Commission's regularly scheduled Wednesday meetings. In providing advice, the assigned Deputy County Counsel must review approximately 20 to 25

matters on the Commission's agenda. The Commission is advised on the applicable Civil Service rules and other County regulations, as well as applicable employment laws, and possible options for the Commission to reach its desired result.

A question has been raised about the role that County Counsel has in the matters that come before the Commission, in that the Commission is advised by an attorney from County Counsel, and other attorneys from County Counsel also represent departments before the Commission.

There is a long line of legal authority for the proposition that attorneys in public law offices can properly serve as advisors to administrative agencies while other attorneys from the same public law office serve as advocates before the same agencies, as long as there is proper separation between the lawyers performing the different functions, the so-called "ethical wall". Ford v. Civil Service Commission (1958) 161 CA2d 692, (L.A. County Civil Service Commission case); 12319 Corp. v. Business License Com. (1982) 137 CA3rd 64 (L.A. County case where a County Counsel attorney advised the Commission while other attorneys advocated before the Commission, and where the License Appeals Board had as a member another attorney from the County Counsel); Howitt v. Superior Court (1992) 3 CA4th 1575 (Due process concerns satisfied if there is appropriate separation); City and County of San Francisco v. Cobra Solutions, Inc. (2006) 38 C4th 839 at 855-856 (Salaried public lawyers do not have the financial interests that private lawyers have in the outcome of cases, and disqualification not needed as long as there is proper screening of the lawyers performing the various functions).

The process of having County Counsel represent both the Commission and departments appearing before the Commission, has been in place for decades. In providing this dual representation, County Counsel has always been careful to maintain the "ethical wall" required by courts. In the rare instances when County Counsel has had matters before the Commission in the past, legal advice, if needed, has been obtained from outside counsel. Occasionally, when the facts require it, the Commission's regular advisors' recuse themselves from an individual Commission case.

The Commissioners have expressed satisfaction with this arrangement and have indicated that they are very satisfied with the advice and service they receive from County Counsel. However, they have expressed a concern that your Board is not always provided all of the relevant information regarding the Commission's decisions, particularly discharge cases, when a department seeks Board authority to seek a writ from the Superior Court.

Recommendation

Therefore, it is recommended that the County continue the current arrangement, with County Counsel representing both the Commission and the departments appearing before the Commission, but that when a request is made to your Board for authority to seek a writ in the Superior Court to challenge a Commission decision, the County Counsel advisor to the Commission should submit a separate statement to the Board presenting the Commission's rationale on the case.

Each Supervisor
May 14, 2009
Page 4

Report on Departmental Advocates

Report on Departmental Advocates/ Use of Outside Counsel

In response to your Board's directive regarding the report that will identify all current advocates who represent the County before the Civil Service Commission, their level of experience and training, and a brief summary of each of the cases they have handled within the last two years including the outcomes of these cases, and costs associated with retaining outside counsel to defend these cases, this Office formed a workgroup of the aforementioned departments and we are compiling the requested information. Specifically, DHR developed and distributed a survey instrument to departments in order to assess the process by which advocates are selected and how they prepare cases to present before the Civil Service Commission. The survey instrument will also include information on the experience and training for advocates. Additionally, information is being sought concerning outcomes of cases handled over the past two years per your mandate. DHR, in conjunction with County Counsel, is in the process of assessing the survey responses and is contacting departmental representatives to discuss their input.

In order to provide a comprehensive response to your Board's directive regarding the current advocates and costs associated with retaining outside counsel, a 60-day extension is necessary to gather this information and to complete a full analysis. Therefore, we are targeting **July 14, 2009**, to provide your Board with our findings and recommendations on this topic.

Should you have any questions regarding this memorandum, please contact me, or your staff may contact Vincent Amerson at (213) 974-1168 or vamerson@ceo.lacounty.gov.

WTF:ES
GS:VLA:cg

c: All Department Heads
Civil Service Commission